

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
(ON APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY)

CASE NO. 33381

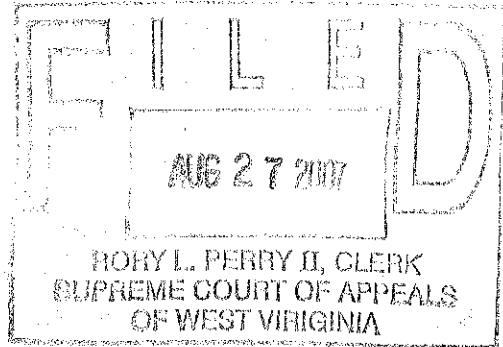
HARRISON COUNTY COMMISSION,  
ROGER DIAZ, PRESIDENT,

Petitioner,

v.

HARRISON COUNTY ASSESSOR,  
CHERYL ROMANO, ASSESSOR,

Respondent.



**APPELLANT'S REPLY BRIEF**

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Harrison County Commission  
Roger Diaz, President

## **TABLE OF AUTHORITIES**

### **STATE CASES**

Fitzgerald v. Fitzgerald, 219 W. Va. 774, 639 S.E.2d 866 (2006) ..... 1

In re Parsons, 218 W. Va. 353, 624 S.E.2d 790 (2005) ..... 2

### **WEST VIRGINIA CODE**

Section 7-7-7 ..... 1, 2

Section 11-1C-8 ..... 1, 2

The crux of the present issue is whether Section 7-7-7 and Section 11-1C-8 of the West Virginia Code are in clear conflict. An apparent conflict is insufficient; in such cases, this Court should construe the two provisions in order to give effect to each of them. Fitzgerald v. Fitzgerald, 219 W. Va. 774, 639 S.E.2d 866, 876 (2006) (quoting State ex rel. Graney v. Sims, 144 W. Va. 72, 105 S.E.2d 886 (1958) (syl. pt. 4)).

Section 7-7-7 permits the Assessor to “appoint and employ” employees with the advice and consent of the County Commission. Section 11-1C-8(a) authorizes the Assessor to “employ” assistants upon the approval of the employment commission.

The Assessor claims that this distinction creates a clear conflict between the statutes, requiring the more specific terms of Section 11-1C-8(a) to trump the more general provisions of Section 7-7-7. But a conflict applies only to the term “employ”; as to the term “appoint,” there is no conflict. Thus, the two statutes should be construed in a manner that gives effect to each of them.

The Assessor claims (without citation to authority) that the term “appoint and employ” conflicts with the term “employ” by arguing that “appoint” refers to the employment of assistants and deputies and that “employ” refers to the hiring of others. If, however, the Assessor’s interpretation were correct, the Legislature would have inserted the phrase “appoint or employ” into Section 7-7-7.

As written, the term “appoint and employ” implies that there are two steps to the employment process. First, the appointment is made. Thereafter comes the employment. The fact that Section 11-1C-8 uses the term “employ” without the term “appoint” prevents a finding that the two statutes are in irreconcilable conflict, because Section 11-1C-8 does not repeat the term “appoint” when utilizing the term “employ.” As this Court reiterated less than two years ago, “It

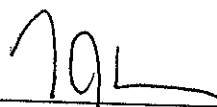
is a settled principle of statutory construction that courts presume the Legislature drafts and passes statutes with full knowledge of existing law.” In re Parsons, 218 W. Va. 353, 358, 624 S.E.2d 790, 795 (2005) (quoting In re Sorsby, 210 W. Va. 708, 714, 559 S.E.2d 45, 51 (2001)); see also Cannon v. University of Chicago, 441 U.S. 677, 696-97 (1979) (“It is always appropriate to assume that our elected representatives, like other citizens, know the law[.]”).

In this case, it should be assumed that the Legislature was aware of Section 7-7-7 when creating Section 11-1C-8 and that, if the Legislature had intended to remove from the Commission the ability to approve the appointment of the employees in question, Section 11-1C-8 would have addressed this issue.

The proposed interpretation allows the two statutes to be reconciled, and to give meaning to both statutes. First, under Section 7-7-7, the Commission approves, or does not approve, the appointment of the employee. Thereafter, under Section 11-1C-8, the Commission has no control over the employment.

For the reasons set forth above and in its prior brief, the appellant, Harrison County Commission, Roger Diaz, President, requests that this Court reverse the judgment entered by the Circuit Court of Harrison County and remand this action with an instruction that the Circuit Court grant the petition for writ of mandamus and deny the counter-petition for writ of mandamus.

Dated the 23<sup>rd</sup> day of August, 2007.

  
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CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of August, 2007, I served the foregoing  
"Appellant's Reply Brief" upon counsel for the respondent by depositing a true copy thereof in the  
United States mail, postage prepaid in an envelope addressed as follows:

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